

TRENT FRANKS
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SUBCOMMITTEE ON THE CONSTITUTION

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Congress of the United States
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December 16, 2009

0028

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20515

Dear Chairman Genachowski:

Like many Americans, I remain very interested in the policies under consideration by the Federal Communications Commission ("Commission") "to preserve the open Internet." The Commission's work has been followed closely by Members of Congress, state and local officials, service and applications providers, industry organizations, advocacy groups, and individuals, each with divergent views on the best policies to pursue.

Many individuals and entities expressed their views to the Commission prior to its adoption of a Notice of Proposed Rulemaking ("NPRM") in connection with WC Docket No. 07-52 (Preserving the Open Internet; Broadband Industry Practices). However, in accordance with the Commission's sunshine agenda prohibition, written and oral presentations (other than those from Members of Congress) were barred from October 16, 2009 until the Commission released the text of the NPRM on October 22, 2009, with the exception of written presentations made through the Open Internet Blog. On November 10, 2009, the Commission released a list of prohibited written presentations made during that period.

While the Commission appears to have followed its rules with respect to the presentations included on the above-referenced list, I am concerned about certain written presentations that were not included on the list. I understand that the Open Internet Coalition sent a letter to you on October 19, 2009, and that public interest groups sent you a letter on October 21, 2009, both of which were directed at the merits and outcome of the Commission's NPRM.

I am therefore inquiring why such presentations were not deemed prohibited presentations. Specifically, were such presentations, which were addressed to you and widely distributed to Members of Congress and the media, as well as on the Internet, filed with the Commission and included in the above-referenced docket? If so, these presentations would clearly violate the Commission's sunshine prohibition. If not, even if these presentations were not actually filed with the Commission, do such presentations violate the spirit, if not the letter, of the sunshine agenda prohibition when they are addressed to you, and clearly directed at the merits and outcome of the Commission's consideration of the NPRM?

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The Commission's sunshine agenda prohibition is an important rule for assuring Congress and the public that Commission decisions are crafted without undue influence. But especially here – where the issue has garnered substantial attention, and where the Commission created a very limited exception for the very purpose of receiving public input in an open and uniform manner –the enforcement of this prohibition seems especially warranted.

I appreciate your public commitment to ensuring that the Commission conducts its proceedings in a fair, transparent, and rules-based manner. I would therefore appreciate your views concerning whether letters addressed to you and clearly intended to impact the outcome of a proceeding subject to a sunshine agenda prohibition violate the spirit, if not the letter, of such prohibition, even if such letters are not actually filed with the Commission.

Most sincerely,

A handwritten signature in black ink, reading "Trent Franks". The signature is fluid and cursive, with the first name "Trent" and last name "Franks" clearly distinguishable.

Trent Franks
United States Congress

cc: Michael J. Copps, Commissioner
Robert M. McDowell, Commissioner
Meredith Attwell Baker, Commissioner
Mignon Clyburn, Commissioner



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 10, 2010

The Honorable Trent Franks
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, D.C. 20215

Dear Congressman Franks:

Thank you for your letter regarding the Commission's *ex parte* rules. In your letter, you note that the Commission issued a *Public Notice* on November 10, 2009, finding that several filings concerning net neutrality that were received shortly before the Commission's open meeting on October 22, were prohibited *ex parte* communications under the Commission's rules. You ask why two other letters addressed to me were not deemed to be prohibited by the *ex parte* rules. These are an October 19, 2009 letter by the Open Internet Coalition and an October 21, 2009 letter by several public interest groups.

The Commission's Office of the General Counsel determined that the October 19 and October 21 letters were not filed in the net neutrality proceeding, and that they were not received by my Office or any other agency decision-maker of whom we are aware. Although copies of these letters were posted on the Internet and may have been distributed to others outside the Commission, such communications do not constitute "presentations" to Commission decision-making personnel for purposes of our *ex parte* rules.

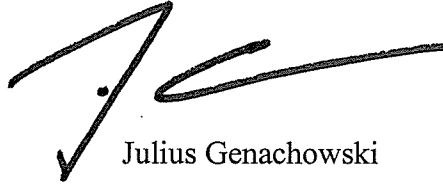
I understand your concern about whether such communications violate the spirit, if not the letter, of the *ex parte* rules, which are intended to ensure that Commission decisions are crafted without undue influence. We do not apply the *ex parte* rules to prohibit or regulate speech expressed only in the public media (rather than directly to the Commission), as was the case with these two letters, particularly given First Amendment considerations. Nevertheless, we take the enforcement of these rules seriously, and I am committed to conducting our proceedings in an open and transparent manner.

You might be familiar with action by the Commission at its February open meeting, proposing amendments to its *ex parte* rules and procedures. I am enclosing a copy of the Commission's News Release for your information. Given the complexity and importance of the issues that come before us, *ex parte* communications are an essential part of our deliberative process. I believe that it is critical to the integrity of our proceedings that we reform and revise the way in which we document these communications. I appreciate your insight on such an

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important issue and will keep your concerns in mind as the Commission proceeds on reform of its *ex parte* procedures.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small checkmark-like flourish at the end.

Julius Genachowski

Enclosure